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10 **UNITED STATES BANKRUPTCY COURT**

11 **FOR THE DISTRICT OF NEVADA**

12 In re:
13 LAS VEGAS MONORAIL COMPANY, a
14 Nevada non-profit corporation,
15 Debtor.

Case No.: BK-S-20-14451
Chapter 11

Date: **OST REQUESTED**
Time: **OST REQUESTED**

16 **OMNIBUS DECLARATION OF CURTIS L. MYLES, III IN**
SUPPORT OF FIRST DAY MOTIONS

17 I, Curtis L. Myles, III, hereby declare, under penalty of perjury under the laws of the United
18 States of America and the State of Nevada, as follows:

20 1. I am over the age of 18 and am mentally competent. I am the President and Chief
21 Executive Officer of Las Vegas Monorail Company (“**Debtor**”) and have served in that capacity
22 since July 18, 2005. In my capacity as Debtor’s President and CEO, I am familiar with Debtor’s
23 business, operational, and financial affairs. I am authorized to submit this Declaration in support of
24 the Debtor’s motions for “first day” emergency relief (“**First Day Motions**”).¹

25 2. Except as otherwise indicated, all facts set forth in this Declaration are based upon
26 my personal knowledge of Debtor’s operations and finances, information learned from my review

27 _____
28 ¹ Unless otherwise noted, all capitalized undefined terms used herein shall have the meanings ascribed to them in the
relevant First Day Motions.

of relevant documents, and information supplied to me by other members of Debtor's management and Debtor's various business and legal advisors. If called upon to testify as to the content of this Declaration, I could and would do so.

3. On September 7, 2020 (“**Petition Date**”), Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, thereby commencing the above-captioned Chapter 11 case (“**Chapter 11 Case**”).

4. Debtor intends to operate its business and manage and preserve its properties as debtor-in-possession under Section 1107(a) and 1108.

5. I am advised by counsel that this Court has jurisdiction over the Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334 and venue is proper in this United States Bankruptcy Court for the District of Nevada pursuant to 28 U.S.C. §§ 1408 and 1409.

I. **GENERAL BACKGROUND**

A. Debtor's Business and Assets.

6. Debtor is a Nevada non-profit corporation that owns the Las Vegas Monorail, an approximately 3.9 mile monorail mass transit system located on the east side of Las Vegas Boulevard in Clark County, Nevada, including two parallel elevated tracks, seven elevated stations, an operations and maintenance building (the “**OMSF**”), nine automatic four car trains, and related equipment, facilities, and improvements (collectively, the “**System**”).

7. The System is operated on land owned by Clark County, Nevada (the “**County**”) pursuant to rights of way and the Franchise Agreement (together with amendments thereto, the “**Franchise Agreement**”) with the County, and on privately owned land pursuant to a ground leases and grants of easement.

B. Debtor's Prepetition Capital Structure.

8. *Prepetition Indenture and Loan.* Pursuant to the *Indenture of Trust*, dated October 1, 2019 (the “**Indenture**”), by and between the Public Finance Authority, a unit of government and a body corporate and politic, established and existing under and by virtue of the laws of the State of Wisconsin, including Sections 66.0301, 66.0303 and 66.0304 of the State of Wisconsin

1 Statutes, as from time to time amended and supplemented (the “**Authority**”), and UMB Bank,
 2 N.A., a national banking association organized and existing under the laws of the United States of
 3 America, as trustee (“**UMB**”), the Authority issued the Public Finance Authority Revenue Bonds
 4 (Las Vegas Monorail) Series 2019A (the “**2019A Bonds**”) and Public Finance Authority Revenue
 5 Bonds (Las Vegas Monorail) Series 2019B (the “**2019B Bonds**” and, collectively with the 2019A
 6 Bonds, the “**Bonds**”), to make a loan (the “**Conduit Loan**”) to Debtor to (a) finance the cost of
 7 the acquisition, construction, improving, and/or equipping of a transportation project (the “**Sands
 8 Station**”), (b) refinance certain short-term indebtedness incurred by Debtor in the aggregate
 9 principal amount of \$13,750,000 owed pursuant to that certain Loan Agreement dated as of July
 10 12, 2019 (the “**Bridge Loan**”), to refinance certain of the costs of the acquisition, construction,
 11 improving and/or equipping the existing approximately 3.9 mile, 7-station, 9-train monorail along
 12 the east side of the Las Vegas Strip owned and operated by Debtor (“**Existing Monorail**”), and
 13 (c) and other costs required in connection therewith. Debtor as a non-profit corporation issued the
 14 Bonds as tax-free bonds.

15 9. *The Conduit Loan.* The Conduit Loan was in the initial principal amount of
 16 \$20,500,000.00, of which \$20,400,000.00 was to accrue interest at the rate of interest applicable
 17 to the 2019A Bonds from the Date of Delivery, \$100,000.00 shall accrue interest at the rate of
 18 interest applicable to the 2019B Bonds from the Date of Delivery, and an amount of up to
 19 \$13,115,000.00, to the extent drawn down on the 2019B Bonds Final Draw Down Date, shall
 20 accrue interest at the rate of interest applicable to the 2019B Bonds from the 2019B Bonds draws.

21 10. *Bondholder.* The sole purchaser of the Bonds was Preston Hollow Capital, LLC
 22 Bonds (“**PHC**”) which as of the Petition Date remains the sole holder of the Bonds.

23 11. *Additional Financing Documents.* In addition to the Indenture, the following
 24 financing documents were executed:

25 a. The Authority and Debtor entered into the *Financing Agreement*, dated October 1,
 26 2019 (the “**Bonds Financing Agreement**”), specifying the terms and conditions of
 27 the Conduit Loan;

28

- 1 b. The Debtor and the Authority entered into the *Tax Agreement*, dated October 10,
2 20129 (the “**Tax Agreement**”) regarding the tax treatment for the Bonds; and
3 c. The Debtor, UMB, PHC and Wells Fargo Securities, LLC, as the Underwriter,
4 entered into the *Agreement to Advance* dated as of October 1, 2019 (the
5 “**Agreement to Advance**”), regarding the advancement of the Conduit Loan.

6 12. True and correct copies of the Indenture, Bonds Financing Agreement, Tax
7 Agreement and Agreement to Advance are attached hereto as **Exhibit 1, 2, 3 and 4**, respectively.

8 13. *Prepetition Security Interests and Prepetition Collateral*. Debtor, as grantor, and
9 UMB executed the following security documents for the Conduit Loan;

- 10 a. *Security Agreement* dated October 10, 2019 (the “**Bonds Security Agreement**”),
11 to secure the payment and performance of the Secured Obligations (as defined in
12 the Bonds Security Agreement) in which Debtor unconditionally granted to UMB
13 for the benefit of the UMB and PHC, a continuing security interest in all property
14 of Debtor, whether real or personal, tangible or intangible, now owned or hereafter
15 acquired or arising and wherever located, including, without limitation, all of
16 Debtor’s right, title, and interest in and to the following, whether now owned or
17 hereafter acquired or arising and wherever located, including, but not limited to, all
18 of Debtor’s real or personal property, equipment, inventory, money, accounts,
19 Accounts and Deposit Accounts (as those terms are defined in the Bond Security
20 Agreement);
- 21 b. *UCC -1 Financing Statement* filed with the Nevada Secretary of State on October
22 10, 2019 (“**Bonds UCC-1 Financing Statement**”);
- 23 c. *Collateral Assignment of Easements* entered into as of October 10, 2019 (the
24 “**Easements Assignment**”) assigning the easements scheduled therein as collateral
25 for the Conduit Loan; and
- 26 d. *Collateral Assignment of Contract* entered into as of October 10, 2019, assigning
27 for security purposes the Franchise Agreement to UMB (the “**Contract
28 Assignment**” and together with the Indenture, Bonds Financing Agreement, Tax

1 Agreement, Agreement to Advance, Bonds Security Agreement, Bonds UCC-1
2 Financing Statement, and Easements Assignment, the “**Bonds Loan Documents**”).

3 14. True and correct copies of the Bonds Security Agreement, Bonds UCC-1 Financing
4 Statement, and Easements Assignment are attached hereto as **Exhibit 5, 6, 7, and 8**. As detailed
5 below, the Debtor maintains a series of Bank Accounts, including both Unrestricted Bank Accounts
6 and Restricted Bank Accounts. UMB’s perfected security interest extends to the Restricted Bank
7 Accounts by virtue of control agreements executed by and between the Debtor and UMB.

8 15. *Prepetition Conduit Loan Obligations*. As of the Petition Date, the aggregate
9 principal amount outstanding under the Conduit Loan was \$20,500,000.

10 16. *EIDL Loan*. Pursuant to that certain *Loan Authorization and Agreement*, dated June
11 15, 2020 (“**EIDL Loan Agreement**”), the U.S. Small Business Administration (“**SBA**”) authorized
12 an Economic Injury Disaster Loan to Debtor in the amount of \$150,000 (“**EIDL Loan**”).

13 17. *EIDL Note*. In return for the EIDL Loan, Debtor promised to pay to the order of the
14 SBA \$150,000, interest on the unpaid principal balance and all other amounts required under the
15 *Note*, dated June 15, 2020 (“**EIDL Note**”).

16 18. *EIDL Security Agreement*. Debtor also executed a *Security Agreement*, dated June
17 15, 2020 (“**EIDL Security Agreement**”) under which Debtor granted the SBA a security interest in
18 the all tangible and intangible personal property, including, but not limited to: (a) inventory, (b)
19 equipment, (c) instruments, including promissory notes (d) chattel paper, including tangible chattel
20 paper and electronic chattel paper, (e) documents, (f) letter of credit rights, (g) accounts, including
21 health-care insurance receivables and credit card receivables, (h) deposit accounts, (i) commercial
22 tort claims, (j) general intangibles, including payment intangibles and software and (k) as-extracted
23 collateral as such terms may from time to time be defined in the Uniform Commercial Code. The
24 EIDL Security Interest does not extend to the Bank Accounts.

25 19. *EIDL UCC -1 Financing Statement*. The SBA filed with the Nevada Secretary of
26 State on July 2, 2020 a *UCC-1 Financing Statement* (“**EIDL UCC-1 Financing Statement**,” and
27 together with the EIDL Loan Agreement, EIDL Note, and EIDL Security Agreement, the “**EIDL**
28

1 **Loan Documents”).** True and correct copies of the EIDL Loan Documents are attached hereto as
2 **Exhibits 9, 10, 11, and 12.**

3 20. The SBA has no perfected security interest in the Bank Accounts (defined below).

4 **C. Events Leading to the Filing of the Chapter 11 Case.**

5 21. In October 2019, based upon the strength of the performance of the System at the
6 time and on projections of System performance, Debtor secured the Conduit Loan.

7 22. As part of the cash flow projections supporting the Conduit Loan, Debtor
8 demonstrated its ability to meet annual maintenance and operational expenses, as well as longer term
9 capital expense. The long-term needs included replacement of the System’s radio communication
10 system (approximately \$2,500,000), fare collection system (approximately \$6,000,000), station
11 elevators and escalators (from \$7,000,000 to \$10,000,000), among other replacements. Debtor had
12 also begun the process of determining the financing structure of the replacement of Monorail trains,
13 expected to begin replacement in 2034 at an anticipated cost of approximately \$190,000,000. Debtor
14 began 2020 with increases in ridership and revenue, with ticket sales through the first two months of
15 the year up over 7%. Through March 18, 2020, when System operations were suspended, Debtor
16 saw a net operating gain of nearly \$1.6 million, a 48% increase over 2019.

17 23. Although the first reported COVID-19 case in Nevada occurred on February 26,
18 2020, and as information on the spread of the virus increased on a daily basis, the strong System
19 performance continued into the first two weeks of March 2020 with tickets sales during just the first
20 two weeks of March 2020 nearly equaling total sales for all of March 2019. However, as reports of
21 the rate of infections and fatalities grew, state and local governments began to react to what was
22 clearly becoming a national and global medical emergency. The tourism and convention market in
23 Las Vegas suddenly began a steep decline. As reported cases grew in Nevada, the state and local
24 governments issued a number of orders closing businesses and restricting gatherings, including
25 resort hotels, convention facilities, shopping, dining, showroom and concert venues. Nationally,
26 federal authorities instituted a number of travel restrictions, limiting domestic and international
27 flights. Collectively, these myriad governmental orders and restrictions within mere days worked to
28 severely dampen visitation to Las Vegas.

1 24. On March 18, 2020, after Governor Sisolak issued orders to close all non-essential
2 businesses, all hotels, restaurants, showrooms, shopping and entertainment venues along the Las
3 Vegas Strip, including those connected to the System, shut down. The Governor's orders also caused
4 the cancellation of nearly all conventions through January 2021; and delayed openings of other large
5 tourism-based projects like the MSG Sphere Entertainment venue and the 3500 room Resorts World
6 Las Vegas Hotel. With the System's normal ridership demographic consisting of well over 95%
7 visitors, and visitation reduced to nearly zero, Debtor made the obvious decision to close the System
8 on March 18, 2020, lay off 93% of its staff, reduce the compensation of remaining staff by up to
9 30%, eliminate fees paid to its board of directors, and cut maintenance and operational expenses to
10 the bare minimum needed to maintain the value and operability of the System. With no realistic
11 projection on when visitation and other Las Vegas Strip area business will return to pre-pandemic
12 levels, Debtor was forced to rely on cash reserves moving forward for the foreseeable future.

13 25. On March 31, 2020, Debtor had \$1.12 million in unrestricted cash with which to
14 maintain the System in closed status. By August 31, 2020, nearly all of the unrestricted cash had
15 been exhausted.

16 26. Even with the resumption of revenue operations, without a return to pre-COVID-19
17 economic activity in Las Vegas, including domestic and international air travel, dining and shopping
18 offerings, large scale conventions, concerts, sporting and other special events, Debtor cannot achieve
19 an operating profit.

20 27. Moreover, by 2034, Debtor's needs for the replacement and repair of its capital assets
21 ("Capital Expenditure" or "CapEx"), including replacement of the nine automated four-car trains,
22 tracks, and related equipment, will exceed \$250,000,000.

II.

PROPOSED SALE OF DEBTOR'S ASSETS ON AN ACCELERATED TIMELINE

1 Agreement, dated September 2, 2020 (“**Stalking Horse Agreement**”) by and between Debtor and
 2 LVCVA.

3 29. Debtor desires to sell to LVCVA, or any other Successful Bidder on substantially
 4 similar terms as those set forth in the Stalking Horse Agreement.

5 30. The transactions contemplated by the Stalking Horse Agreement are conditioned
 6 upon the Chapter 11 Case being commenced and proceeding under Chapter 11 of the Bankruptcy
 7 Code, subject to and consummated only pursuant to the approval of the Bankruptcy Court of such
 8 sale free and clear of any interest in such property, all as more specifically provided in the Stalking
 9 Horse Agreement, and in accordance with Sections 105, 363 and 365 and other applicable provisions
 10 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Bid Procedures (defined
 11 in the Stalking Horse Agreement).

12 31. As such, contemporaneously with the filing of the Chapter 11 Case, Debtor filed
 13 *Debtor’s Motion Pursuant to Sections 105(a), 363, 365, 503(b), and 507(a)(2) of the Bankruptcy
 14 Code: (I) Approving Bidding Procedures for the Sale of Substantially all Assets of Debtor,
 15 Scheduling an Auction and Sale Hearing, and Approving the Form and Manner of Notice Thereof;
 16 (II) Approving the Sale of Assets Free and Clear of Liens, Claims, Interests, and Encumbrances,
 17 (III) Approving the Assumption and Assignment of Certain Related Executory Contracts; (IV)
 18 Waiving the Requirements of Bankruptcy Rules 6004(h) and 6006(d), and (V) Granting Related
 19 Relief (“**Bid Procedures and Sale Motion**”), which requests this Court: (1) enter a Bidding
 20 Procedures Order (defined in the Bid Procedures and Sale Motion), substantially in the form attached
 21 thereto as Exhibit 1, approving bidding procedures for the sale of the Sale Assets and the over-bid
 22 protections for the LVCVA, setting an auction and sale hearing date, and approving notices and other
 23 relief related to the foregoing; (2) following a final hearing, entry of one or more orders, authorizing
 24 and approving sales free and clear of all liens (statutory or otherwise), claims, interests, and
 25 encumbrances of every kind and nature with all such liens, claims, interests, and other encumbrances
 26 attaching with the same validity and priority to the sale proceeds, the assumption and assignment of
 27 related executory contracts and unexpired leases, and waiving of the requirements of Bankruptcy
 28 Rules 6004(h) and 6006(d); and (3) grant such other and further relief as is just and proper.*

1 32. An accelerated sale process is required for several reasons. First, Debtor faces
2 liquidity constraints that necessitate an accelerated sale process. Prior to the Petition Date, Debtor
3 was able to obtain the Stalking Horse Deposit (defined in the Stalking Horse Agreement) from the
4 LVCVA which has allowed Debtor to fund this Chapter 11 Case and minimal operations through
5 November 30, 2020. Without the sale closing prior to November 30, 2020, or another infusion of
6 money, Debtor will no longer have the wherewithal to continue its limited operations and maintain
7 the value of its assets.

8 33. Given that the Debtor will not generate any revenue for the foreseeable future, the
9 lack of fair market value of the Monorail over and above the Conduit Loan and EIDL Loan, and the
10 requirements under Section 364 of the Bankruptcy Code for obtaining post-Petition Date financing,
11 Debtor is not able to obtain financing during the Chapter 11 Case and operate past November 30,
12 2020. Debtor did receive an offer to provide debtor-in-possession financing in an unstated amount
13 to sustain operations during a Chapter 11 Case as a “priming loan” ahead of the Conduit Loan and
14 EIDL Loan. PHC dismissed this out-of-hand. Given the inability to provide adequate protection as
15 I understand the concept, any form of a debtor-in-possession loan is not feasible.

16 34. Grants of easements for rights-of-way and stations by Harrah’s and Imperial Palace
17 to Debtor automatically terminate if the System is owned or operated by a for-profit entity.

18 35. The ownership of the Assets by an entity other than a governmental entity or a non-
19 profit will eliminate the tax-free nature of the Bonds and require the immediate refinance of the
20 Bonds.

21 36. Thus, a sale to the LVCVA – a government agency, established by Nevada state law,
22 funded by a County room tax and governed by an autonomous board of directors – is the best and
23 likely the only feasible option for Debtor. Debtor intends to seek other Qualified Bidders to compete
24 in the Auction of the Sale Assets.

25 37. Given Debtor’s current financial condition, the existing pre-petition and post-petition
26 marketing of Debtor’s business, the implications if sold to a for-profit entity, and the fact that a sale
27 on the terms set forth in the Stalking Horse Agreement would result in satisfaction of substantially
28 all of Debtor’s pre-petition liabilities and allow for the resumption of the Monorail operations when

feasible, Debtor believes that the terms of the Stalking Horse Agreement and the required timeline are both reasonable and necessary under the circumstances of the Chapter 11 Case and in the best interests of Debtor's estate and creditors.

III.
FIRST DAY MOTIONS

38. Debtor filed or expects to file the First Day Motions described below. The following is only intended to be a summary of the First Day Motions. The full grounds for the relief sought in the First Day Motions is set forth in each of the same.

39. Debtor filed its First Day Motions to allow it to efficiently and effectively operate in its Chapter 11 Case. The relief sought in the First Day Motions is critical to Debtor's limited business operations, will allow for a comprehensive and smooth transition into Chapter 11, and will ensure that Debtor is able to maintain and preserve the value of its assets to sell for the benefit of its estate and creditors.

40. The First Day Motions seek relief to allow Debtors to meet necessary obligations and fulfill its duties as debtor-in-possession and minimize the adverse effects of the Chapter 11 filings on its businesses. I am familiar with the contents of each First Day Motion and believe the relief sought therein is (i) necessary to enable Debtor to maintain its limited business operations during the pendency of the Chapter 11 Case with minimal disruption or loss of productivity and value, (ii) critical to achieving a successful liquidation of Debtor's assets, and (iii) in the best interests of Debtor, its estate and all stakeholders.

A. Emergency Motion for Interim and Final Orders: (I) Authorizing Debtors to Pay Wages, Salaries, Benefits, and Other Employee Obligations; and (II) Authoring and Directing Financial Institutions to Honor and Process Checks and Transfers Related to Such Obligations.

41. In the *Emergency Motion for Interim and Final Orders: (I) Authorizing Debtors to Pay Wages, Salaries, Benefits, and Other Employee Obligations; and (II) Authoring and Directing Financial Institutions to Honor and Process Checks and Transfers Related to Such Obligations* (“**Wages Motion**”), Debtor requests entry of interim and final orders: (a) authorizing, but not directing, Debtor to continue to honor and pay (i) all prepetition employee obligations, as described

1 more fully therein and (ii) all prepetition federal and state withholding obligations; (b) authorizing
 2 and directing banks and financial institutions to honor and process checks and transfers related to
 3 such payments; and (c) providing any additional relief in order to effectuate the foregoing.

4 42. As of the Petition Date, Debtor employed approximately nineteen employees
 5 (“Employees”) in the ordinary course of its business. Continued service by the Employees is vital
 6 to the value and preservation of Debtor’s assets.

7 43. As of the Petition Date, the Employees were owed or had accrued in their favor,
 8 various sums from Debtor for wages and salaries incurred in the ordinary course of Debtor’s
 9 business, including any prepetition compensation (collectively, “**Wage Obligations**”). The total
 10 estimated amount of Wage Obligations that will have accrued, but remain unpaid, as of the Petition
 11 Date is approximately \$5,380.16. Debtor pays its Employees on a bi-weekly payroll cycle. Debtor’s
 12 last payroll was made on September 6, 2020 for wages accrued through August 22, 2020. The next
 13 payroll is due to be made on September 26, 2020, for the 14-day period beginning September 6 and
 14 ending September 20, 2020 and will total approximately \$75,322.22.

15 44. Debtor is required by law to withhold from its Employees’ wages amounts related to
 16 federal, state, and local income taxes, as well as social security and Medicare taxes and to remit the
 17 same to the appropriate taxing authorities. To the extent that Debtor has deducted funds from the
 18 Employees’ paychecks sufficient to pay prepetition taxes, withholding taxes and FICA contributions
 19 attributable to Wage Obligations, which are due but have not been paid yet to any governmental
 20 entity, Debtor seeks authorization to continue to deduct these funds and pay them to such
 21 governmental entities in the ordinary course of business.

22 45. In addition, Debtor is required to make matching payments from its own funds on
 23 account of social security and Medicare taxes, and to pay, based on a percentage of gross payroll
 24 (and subject to state-imposed limits), additional amounts to the taxing authorities for, among other
 25 things, state and federal unemployment insurance and workers, and compensation obligations (“**Tax**
 26 **Obligations**”). Debtor seeks authorization to continue to pay these funds in the ordinary course of
 27 business. The total estimated amount of Tax Obligations that will have accrued, but remain unpaid,
 28 as of the Petition date is approximately \$411.58.

1 46. In addition, in the ordinary course of its business, Debtor has accrued amounts for
2 health insurance programs pertaining to services rendered by the Employees prior to the Petition
3 Date (“**Employee Benefit Plans**”). These employee benefit contributions (“**Employee Benefit**
4 **Contributions**,” together with the Wage Obligations, Tax Obligations, Employee Benefit Plans, and
5 Employee Benefit Contributions, “**Employee Obligations**”) are an integral part of the compensation
6 to which the Employees are entitled. The amount of Employee Benefit Contributions which will
7 have accrued, but will remain unpaid, prior to the Petition Date is estimated to be approximately
8 \$20,522.

9 47. Debtor’s Employee Obligations to be paid to or for the benefit of each of the
10 Employees pursuant to the request will not exceed \$13,650 per employee, consistent with the cap
11 provided in Section 507(a)(4).

12 48. If Debtor is unable to take the necessary steps to ensure that wages and taxes are paid
13 for the pay period commencing immediately prior to the Petition Date and concluding post-petition,
14 there is a significant risk that certain essential Employees will resign and that those Employees that
15 remain will be discontented.

16 49. Debtor will have sufficient cash to honor all of the foregoing employee related
17 obligations.

18 50. Continued payment of Employee Obligations is essential to preserve the morale and
19 to maintain positive relations between Debtor and its Employees. If the relief requested is not
20 granted, the success of Debtor’s Chapter 11 Case will be placed in substantial jeopardy. Thus, the
21 relief requested is in the best interests of Debtor, its Estate, and its creditors.

22 51. If the outstanding Employee Obligations are not immediately satisfied, Debtor will
23 experience immediate and irreparable harm.

24 ...

25 ...

26 ...

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28

1 **B. Debtor's Motion for Interim and Final Orders (I) Authorizing Maintenance of**
 2 **Prepetition Cash Management System and Bank Accounts; and (II) Granting Related**
 3 **Relief.**

4 52. In the *Motion for Interim and Final Orders: (I) Authorizing Maintenance of*
 5 *Prepetition Cash Management System and Bank Accounts; and (II) Granting Related Relief* ("Bank
 6 **Accounts Motion**

7 a. that Debtor is authorized and empowered to: (1) maintain its Cash
 8 Management System and continue to use all of its Bank Accounts in existence as of the
 9 Petition Date; (2) treat the Bank Accounts for all intents and purposes as debtor-in-
 10 possession accounts; (3) use, in their present form, existing checks and other documents
 11 related to the Bank Accounts; (4) pay prepetition and postpetition ordinary course bank
 12 fees in connection with the Bank Accounts; and (5) perform their obligations under the
 13 documents and agreements governing the Bank Accounts;

14 b. that Debtor maintains records of all transfers and transactions within the
 15 Cash Management System so that all transfers and transactions are adequately and
 16 promptly documented in, and ascertainable and traceable from, Debtor's Accounting
 17 Systems;

18 c. that all Banks at which Debtor maintains Bank Accounts are authorized and
 19 directed to: (1) continue to administer, service, and maintain the Bank Accounts as such
 20 accounts were administered, serviced, and maintained prior to the Petition Date without
 21 interruption and in the usual and ordinary course; and (2) pay any and all checks, drafts,
 22 wires, automated clearinghouse (ACH) transfers, electronic fund transfers, or other items
 23 presented, issued, or drawn on the Bank. Accounts (collectively, "**Debits**") on account of
 24 a claim arising on or after the Petition Date so long as there are sufficient collected funds
 25 in the relevant Bank Accounts and in accordance with the agreements governing said Bank
 26 Accounts, including, without limitation, any prepetition cash management agreements,
 27 merchant service agreements, or treasury services agreements;

28 d. that no Debits issued on the Bank Accounts prior to, but presented after, the
 29 commencement of Debtor's Chapter 11 Case are honored or paid, other than the Permitted
 30 Checks (defined below) explicitly provided for herein, or as otherwise permitted by Court
 31 order after notice and a hearing;

32 e. that the Debtor will promptly provide the Banks with a list of pre-Petition
 33 Date checks that the Banks are authorized to honor ("**Permitted Checks**"). If an employee
 34 or vendor that was issued a Permitted Check refuses or is otherwise unable to re-present
 35 the prepetition check for payment, Debtor is authorized to issue a replacement check or
 36 cashier's check, as requested by such employee or vendor;

37 f. that those certain existing deposit agreements between Debtor and its
 38 existing Banks shall continue to govern the postpetition cash management relationship
 39 between Debtor and the Banks, and that all of the provisions of such agreements, including,
 40 without limitation, the termination and fee provisions, shall remain in full force and effect;

1 g. that Debtor and the Banks may, without further order of this Court, agree to
 2 and implement changes to the Cash Management System and procedures in the ordinary
 3 course of business, including, without limitation, the opening and closing of bank accounts;

4 h. that nothing contained in this Motion or its subsequent order may prevent
 5 Debtor from closing the Bank Accounts as they deem necessary and appropriate;

6 i. that Debtor reimburses the Banks for any claim arising prior to or after the
 7 Petition Date in connection with Debits deposited with the Banks which have been
 8 dishonored or returned for insufficient funds in the applicable accounts;

9 j. that each Bank that maintained one or more Bank Accounts implements
 10 reasonable handling procedures to effectuate the terms requested in this Motion. Debtor
 11 requests that no Bank that implements such handling procedures be liable to Debtor or its
 12 estate, or otherwise held in violation of this Motion or its subsequent order, for honoring a
 13 prepetition Debit or other Debit: (1) at the direction of Debtor that such prepetition Debit
 14 or other Debit be honored; (2) in the good faith belief that the Court has authorized that
 15 such prepetition Debit or other Debit be honored; or (3) as a result of an innocent mistake
 16 made despite implementation of such handling procedures;

17 k. that the relief, rights, and responsibilities requested herein and granted in
 18 the order are deemed to apply to any and all Bank Accounts maintained in Debtor's name;

19 l. that, to the extent any other order (if any) is entered directing a Bank to
 20 honor Debits made, drawn, or issued in payment of prepetition claims, the obligation to
 21 honor such items are subject to the order granting this Motion;

22 m. that Debtor and the Banks are authorized and directed to continue to
 23 perform pursuant to the terms of any prepetition documents and agreements governing the
 24 Bank Accounts, except and to the extent otherwise directed by the terms of the order;

25 n. that the Banks are authorized to continue offsetting any funds deposited in
 26 the Bank Accounts by Debtor to the extent necessary to cover any fees, charges, and
 27 assessments set forth or provided for in the agreements governing the Bank Accounts or as
 28 otherwise permitted in the ordinary course of business pursuant to the agreements
 governing the Bank Accounts;

29 o. that Debtor and the CC Processors are authorized to perform their
 30 obligations pursuant to the terms of the agreements between Debtor and the CC Processors.
 31 Debtors seek authorization to do and perform all acts, to make, execute, and deliver all
 32 instruments and documents, and to pay fees, charges, and expenses which may be required
 33 or necessary for Debtor's performance under any agreements with the CC Processors; and

34 p. that the Restricted Bank Accounts shall remain as is and in place as they
 35 were prior to the Petition Date.

36 53. Debtor has one centralized cash management system ("Cash Management
 37 System") to collect and transfer funds generated by its operations and to disburse those funds to
 38 satisfy the obligations required to operate its business.

1 54. In the ordinary course of its business, Debtor utilizes the Cash Management System
 2 to efficiently collect, transfer, and disburse funds generated through Debtor's operations.

3 55. Debtor has the following six unrestricted bank accounts (together, the
 4 **"Unrestricted Bank Accounts"**):

- 5 - Bank of Nevada - Operating Account – x2207 – (**"Operating Account"**) is utilized for
 6 processing checks/vendor payments for operating expenditures. The Operating
 7 Account is utilized as the "house account" for the ZBA activities related to the Payroll
 8 and Collection Account (defined below).
- 9 - Bank of Nevada – Payroll Account – x2304 – (**"Payroll Account"**) is utilized for
 10 processing payroll expenditures. The Payroll Account is a ZBA account and each night
 11 pulls funding during a deficit from the Operating Account or sweeps into the Operating
 12 Account during a surplus.
- 13 - Bank of Nevada – Collection Account – x2355 – (**"Collection Account"**) is utilized
 14 for check deposits and incoming funds. The Collection Account is a ZBA account and
 15 each night pulls funding during a deficit from the Operating Account or sweeps into
 16 the Operating Account during a surplus.
- 17 - Bank of Nevada – Debit Card Account – x8101 – (**"Debit Card Account"**) is an
 18 inactive that has a \$0 balance.
- 19 - Bank of Nevada – LVMC – General Fund – x6185 – (**"General Fund Account"**) was
 20 opened pursuant to the Indenture. The General Fund Account has a \$0 balance and is
 21 inactive.
- 22 - Bank of Nevada – LVMC – Reimbursement – x5283 – (**"Reimbursement Account"**)
 23 is utilized to house reimbursements from Harrah's Las Vegas LLC related to the
 24 *Temporary Closure and Temporary Construction License Agreements*.

25 56. Bank of Nevada is an "authorized depository".

26 57. Debtor also has the following ten restricted bank accounts (**"Restricted Bank**
 27 **Accounts,"** and together with the Unrestricted Bank Accounts, the **"Bank Accounts"**):

- 28 - Wells Fargo, N.A. (**"Wells Fargo"**) – Removal Costs Escrow Fund – x2520 – was

1 opened to house removal costs of tearing down the System.

- 2 - UMB Bank, N.A. (“**UMB**,” and together with Bank of Nevada and Wells Fargo, the
3 “**Banks**’) (Restricted) – Public Finance Authority Revenue Bonds (LVMC) Series
4 2019A&2019B – x0601 – was opened to house the following restricted reserve
5 accounts pursuant to Indenture:
- 6 - PFA Revenue Bonds – Revenue Fund – was opened pursuant to Section 5.09
7 of Indenture to house all amounts transferred to UMB from the Collection
8 Account pursuant to Section 4.3 of Bonds Financing Agreement;
- 9 - PFA Revenue Bonds – Construction Fund – was opened pursuant to Section
10 5.08 of the Indenture for purpose of paying amounts owed under the
11 construction agreements and other costs of Sands station;
- 12 - PFA Revenue Bonds – Debt Service Interest Sub Account – was opened
13 pursuant to Indenture to receive monthly deposits to make semi-annual interest
14 payments;
- 15 - PFA Revenue Bonds – Debt Service Principal Sub Account – was opened
16 pursuant to Indenture to receive monthly deposits to make semi-annual
17 principal payments, as applicable;
- 18 - PFA Revenue Bonds – Reserve Account – was opened pursuant to Indenture
19 Section 5.11 that houses DSRF A and DSRF B (defined in the Indenture) of
20 \$1,694,062 and \$10,662, respectively;
- 21 - PFA Revenue Bonds – Supplemental Reserve Fund – was opened pursuant to
22 Section 5.13 of Indenture for allowing funds to be withdrawn from time to time
23 to deposit into Debt Service Fund (defined in the Indenture) to make scheduled
24 payments of principal and interest on the Bonds due on the respective payment
25 date in the event insufficient amounts are available in the Debt Service Fund;
- 26 - PFA Revenue Bonds – Operating Reserve Fund – was opened pursuant to
27 Section 5.12 of Indenture for purpose of reserving for and paying O&M costs
28 in an amount equal to the Operating Reserve Requirement (defined in the

1 Indenture).

- 2 - PFA Revenue Bonds – Capital Expenditure Reserve Fund – was opened
 3 pursuant to Section 5.14 of the Indenture for the purpose of reserving for and
 4 paying for Capital Expenditures (defined in the Indenture);
 5 - PFA Revenue Bonds – Cost of Issuance Fund – Trustee is directed to make
 6 payments from the COI fund to pay Costs of Issuance of the 2019A Bonds and
 7 the 2019B Bonds (as those terms are defined in the Indenture).

8 58. Wells Fargo Bank is an “authorized depository”.

9 59. The Restricted Bank Accounts are subject to six deposit account control agreements
 10 related to the issuance of the Bonds pursuant to the Conduit Loan.

11 60. As provided for in the Bonds Loan Documents, the Restricted Bank Accounts shall
 12 remain as is and in place as they were prior to the Petition Date.

13 61. The Bank Accounts tie into and provide data to Debtor’s Accounting System
 14 (defined hereinafter) to accurately record such collections, transfers, and disbursements as they
 15 are made.

16 62. Specifically, Debtor utilizes Sage 100 Advanced 2018 (Version 6.00.3.0) – Sage
 17 Software, Inc. (“**Accounting System**”).

18 63. Additionally, Debtor has agreements with credit card processing companies (i)
 19 Worldpay (Vantiv/Fifth Third - Ticket Vending Machines (TVM) Processing; (ii)
 20 TrustCommerce – eCommerce – except Google Pay; (iii) Stripe – eCommerce – only Google
 21 Pay; and (iv) Mercury – Point of Sale (POS) system (together, “**CC Processors**”).

22 64. Allowing Debtor to maintain its Cash Management System and Bank Accounts will
 23 help to ease the transition into chapter 11 and eliminate the administrative burden of opening new
 24 accounts. Without the relief requested herein, Debtor would be required to close its existing Bank
 25 Accounts, open new bank accounts at cooperating depositories and imprint checks with the
 26 “Debtor-in-Possession” label. Complying with such requirements will needlessly burden Debtor
 27 without a corresponding benefit to parties in interest.

28

1 65. Debtor's Cash Management System is an ordinary, usual, and important business
2 practice. The Cash Management System enables Debtor to maintain control over the receipt and
3 disbursement of cash, and to generate timely and accurate financial information critical to
4 managing Debtor's business during the pendency of the Chapter 11 Case. If these practices and
5 procedures are disrupted, Debtor's effort to reorganize may be jeopardized.

6 66. Debtor's Cash Management System is similar to those commonly employed by
7 corporate enterprises of comparable size and complexity. Many corporate enterprises use these
8 cash management systems because such systems provide numerous benefits. Among the most
9 important of these benefits is the ability to control corporate funds and ensure cash availability, to
10 reduce the cost of borrowed funds, to reduce administrative expenses, and to have easy access to
11 timely and accurate financial information.

12 67. Establishing a new cash management system would entail significant delay and
13 cost, particularly considering the Cash Management System's complexity and reliability. At a
14 minimum, substantial disruptions to Debtor's business would occur by, among other things,
15 delaying collection and disbursement of the payments to vendors, employees, and customers. This
16 would in turn harm stakeholder confidence, thus disrupting mutually beneficial relationships with
17 trade creditors, customers, and employees, among others. Such a negative impact on Debtor's
18 operations would hinder a successful sale of its assets and/or reorganization in Chapter 11.

19 68. Maintaining the existing Cash Management System would not prejudice any party.
20 Debtor will maintain strict records with respect to all transfers of cash so that it is able to readily
21 account for all transactions. Debtor's maintenance of its existing Cash Management System is not
22 only of critical importance to Debtor's business operations but is also in the best interests of
23 Debtor's estate and creditors.

24 69. If the Cash Management System or Bank Accounts are disrupted, Debtor will
25 experience immediate and irreparable harm.

26 70. To require Debtor to close the Bank Accounts and to open new bank accounts
27 would cause substantial disruption and delay in Debtor's ongoing operations and would materially
28 and adversely affect Debtor's limited business operations and the value of its assets. To avoid

1 such problems and to ensure a smooth transition into Chapter 11, it is imperative that Debtor be
 2 permitted to continue using its Bank Accounts.

3 71. If the Cash Management System or Bank Accounts are disrupted, Debtor will
 4 experience immediate and irreparable harm.

5 72. In view of the urgency of the relief requested herein and the risk to Debtor's
 6 operations if Debtor's Cash Management System or Bank Accounts are interrupted, a fourteen-
 7 day stay of the relief sought herein is impractical.

8 **C. Debtor's Motion for Interim and Final Orders (I) Authorizing Payment of Prepetition
 9 Claims of Critical Vendors; and (II) Granting Related Relief.**

10 73. In the *Motion for Interim and Final Orders (I) Authorizing Payment of Prepetition
 11 Claims of Critical Vendors; and (II) Granting Related Relief* ("Critical Vendors Motion"), Debtor
 12 seeks entry of interim and final orders (a) authorizing, but not requiring, Debtor to pay, in its
 13 discretion, all or part of the claims of the critical vendors listed on Exhibit 3 to the Critical Vendor
 14 Motion ("Critical Vendor Claims"); (b) authorizing financial institutions to receive, process, honor,
 15 and pay all checks presented for payment and electronic payment requests related to the Critical
 16 Vendor Claims described in the Critical Vendors Motion; and (c) authorizing Debtor to issue new
 17 postpetition checks, or effect new fund transfers, to replace any prepetition checks or fund transfer
 18 requests that may be dishonored or rejected in connection with obligations owed to the Critical
 19 Vendors.

20 74. The Critical Vendors provide products and/or services without which Debtor cannot
 21 successfully preserve and operate the System and which services Debtor could not replace without
 22 suffering imminent harm to its operations. This is so because Thales Transport & Security, Inc.
 23 provides Debtor with maintenance and software support for the System's automated train control
 24 software, along with technical support for Debtor's critical radio and train communication equipment
 25 as the Original Equipment Manufacturer. Similarly, KONE Inc. provides preventative and
 26 corrective maintenance services for the escalators and elevators, for which it is the Original
 27 Equipment Manufacturer for 95% of, at all of Debtor's seven separate stations and supporting

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1 maintenance facility. The escalators and elevators serve a pivotal role as they are used to transport
2 passengers from the ground and mezzanine levels to the station platform level.

3 75. To preserve the value of Debtor's assets and its value as an ongoing concern, Debtor
4 must have the ability to fund and maintain its limited operations, which includes paying and
5 receiving products and/or services from the Critical Vendors.

6 76. The Critical Vendors may not continue to provide the products and/or services as a
7 result of the Chapter 11 Case. In fact, the Critical Vendors may not continue to provide services
8 until their pre-Petition Date claims are paid. Were the Critical Vendors to withhold such products
9 and/or services, Debtor's limited operations and the value of its assets would be jeopardized, and the
10 recoveries of all creditors would be placed in jeopardy.

11 77. It is unlikely that other software and maintenance providers could replace the services
12 provided by the Critical Vendors, considering the Critical Vendors are the Original Equipment
13 Manufacturers and the circumstances of the Chapter 11 Case. As to Thales, if it discontinues
14 providing service and Debtor has an issue that requires its support, the System's operations will
15 cease.

16 78. If the Critical Vendors fail to provide further products and/or service, it is unlikely
17 Debtor will be able to escape the immediate and irreparable harm. Without the products and/or
18 services of the Critical Vendors, Debtor could be out of business.

19 79. As of the Petition Date, the Critical Vendors' prepetition claims amount to \$115,601
20 ("Claims").

21 80. If Debtor is unable to take the necessary steps to ensure that its Critical Vendors
22 are paid, it will suffer imminent harm to its operations that Critical Vendors provide products and/or
23 services in support of, without which Debtor cannot successfully operate and which services Debtor
24 could not replace without suffering imminent harm to its operations.

25 81. Debtor will have sufficient cash to honor all of the Critical Vendors' prepetition Date
26 claims.

27 82. Payment of the Critical Vendors Claims are essential to sustain Debtor's limited
28 operations and maintaining the value of its assets. If the relief requested is not granted, the success

1 of Debtor's Chapter 11 Case will be placed in substantial jeopardy. Thus, the relief requested is in
 2 the best interests of Debtor, its Estate, and its creditors.

3 83. Debtor has budgeted for this expense and has sufficient cash on hand to meet its
 4 ongoing obligations while it pursues the sale of the System.

5 84. If the outstanding Critical Vendors' prepetition claims are not immediately satisfied,
 6 Debtor will experience immediate and irreparable harm.

7 **D. Motion of Debtor for Entry of Interim and Final Orders Pursuant to Sections 105(a)
 8 and 366 of the Bankruptcy Code (I) Prohibiting Utility Companies From Altering,
 9 Refusing or Discontinuing Services to, or Discriminating Against, Debtor on Account
 10 of Prepetition Amounts Due; (II) Deeming Utility Providers Adequately Assured of
 11 Future Performance; (III) Authorizing Debtor to Establish the Adequate Assurance
 Deposit Accounts and Pay the Adequate Assurance Deposits; (IV) Establishing
 Procedures for Objection to the Adequate Assurance Procedures; and (V) Granted
 Certain Related Relief.**

12 85. In the *Motion of Debtor for Entry of Interim and Final Orders Pursuant to Sections*
 13 *105(a) and 366 of the Bankruptcy Code (I) Prohibiting Utility Companies From Altering, Refusing*
 14 *or Discontinuing Services to, or Discriminating Against, Debtor on Account of Prepetition*
 15 *Amounts Due; (II) Deeming Utility Providers Adequately Assured of Future Performance; (III)*
 16 *Authorizing Debtor to Establish the Adequate Assurance Deposit Accounts and Pay the Adequate*
 17 *Assurance Deposits; (IV) Establishing Procedures for Objection to the Adequate Assurance*
 18 *Procedures; and (V) Granted Certain Related Relief ("Utilities Motion")*, Debtor seeks entry of
 19 an interim order substantially in the form attached thereto as Exhibit 2 ("Interim Order"): (i)
 20 prohibiting the Utility Providers from altering, refusing, or discontinuing service to Debtor on
 21 account of unpaid amounts for prepetition utility services, including the making of demands for
 22 security deposits or accelerated payment terms, pending entry of a final order granting the relief
 23 sought therein in substantially the form attached thereto as Exhibit 3 ("Final Order"); (ii)
 24 providing that the Utility Providers have "adequate assurance of payment" within the meaning of
 25 section 366 of the Bankruptcy Code based, *inter alia*, upon Debtor establishing a segregated
 26 account containing an amount equal to fifty percent (50%) of Debtor's estimated average monthly
 27 cost of utility service, which may be adjusted by Debtor for reasons specified herein; (iii)
 28

1 establishing procedures for resolving requests for additional adequate assurance and objections to
 2 the Utilities Motion; and (iv) authorizing, but not directing, Debtor to provide additional adequate
 3 assurance of payment to the Utility Providers if required.

4 86. Uninterrupted utility services are essential to Debtor's ongoing operations and the
 5 value of its assets. A disruption of these services would likely be costly to Debtor and harmful to
 6 its business and the value of its assets, as Debtor would be forced from the outset of the Chapter
 7 11 Case to focus on finding replacement Utility Providers and services, where possible, rather than
 8 focusing on efforts to preserve and maximize the value of Debtor's estate. Moreover, the business
 9 disruption that would likely result from interruption of these services would likely damage
 10 customer relationships, revenues, and profits and could adversely affect Debtor's efforts in the
 11 Chapter 11 Case, to the detriment of its estate, creditors, and employees. It is therefore critical
 12 that all utility services currently provided to Debtor continue uninterrupted.

13 87. In connection with the operation of its business and management of its property,
 14 Debtor incurs utility expenses in the ordinary course of business for, among other things, water,
 15 sewer service, electricity, gas, local and long-distance telecom service, internet service, waste
 16 disposal and other similar services (together, "**Utility Services**"). On a monthly basis, Debtor
 17 spends approximately \$23,000 per month on Utility Services. A non-exhaustive list of Debtor's
 18 Utility Providers, as of the Petition Date, is attached to the Utilities Motion as Exhibit 1.²

19 88. Therefore, the Adequate Assurance Deposit by Debtor will be \$11,500.

20 ...

21 ...

22 ...

23 ...

24

25 ² While Debtor has exercised its best efforts to list all of its Utility Providers and account numbers in Exhibit 1, it is
 26 possible that certain Utility Providers and/or account numbers may have been omitted from this list. Debtor reserves
 27 the right to amend Exhibit 1 to add any Utility Providers and/or account numbers that were omitted therefrom and to
 request that the relief requested herein apply equally to all such entities and accounts. Furthermore, the relief requested
 herein shall apply to all of Debtor's accounts with every Utility Provider listed in Exhibit 1 regardless of whether each
 such account is contained in Exhibit 1. In addition, Debtor reserves the right to argue that any of the entities now or
 hereafter listed in Exhibit 1 are not "utilities" within the meaning of section 366(a) of the Bankruptcy Code.

1 **E. Debtor's Motion for Interim and Final Orders Authorizing Debtor to Honor and**
2 **Continue Certain Customer Programs and Customer Obligations in the Ordinary**
3 **Course of Business.**

4 89. In the *Debtor's Motion for Interim and Final Orders Authorizing Debtor to Honor*
5 *and Continue Certain Customer Programs and Customers Obligations in the Ordinary Course of*
6 *Business ("Customer Programs Motion")*, Debtor requests that this Court enter interim and final
7 orders, substantially in the form attached thereto as Exhibit 1 and 2: (1) authorizing Debtor to
8 honor its prepetition Customer Obligations in the ordinary course of business; (2) authorizing
9 Debtor to continue its Customer Programs in the ordinary course of business; (3) authorizing all
10 applicable banks and other financial institutions, when requested by Debtor, to receive, process,
11 honor, and pay any and all checks and transfers related to the foregoing, whether presented prior
12 to or after the Petition Date in accordance with the stated policies with regard thereto, provided
13 sufficient funds exist in Debtor's accounts to cover such payment; and (4) for such other and
14 further relief as is just and proper.

15 90. There are several different ways for individuals to purchase tickets to ride the
16 Monorail, including from vending machines at the stations and through online travel agent (OTA)
17 sites such as Expedia and Vegas.com, various travel agents, tour and travel companies and other
18 travel resellers, discount consumer sites such as Groupon, through integrations with convention
19 badges on contracted convention websites, and android phone users are able to purchase directly in
20 the Google Pay platform and store in their Google Pay wallet.

21 91. Electronic tickets are valid for 365 days from purchase as long as they are not
22 validated at a Monorail faregate. Debtor has been contacted for refunds by customers who either
23 purchased tickets prior to the closure of the system on March 18 for a planned trip, or purchased a
24 ticket within the initial closure period with the expectation of using their ticket upon their next visit
25 to Las Vegas with the assumption that the Monorail would recommence operations by the time they
26 arrived.

27 92. In the ordinary course of business, Debtor honored tickets for 365 days from purchase
28 and, if requested, provided refunds if the System was closed ("Customer Programs").

1 93. The amount of these refunds range from approximately \$20 up to \$200 or more,
2 based on the quantity and length of timeframe of the passes purchased. Debtor estimates that through
3 November 30, 2020, the amount of such refunds will not exceed \$15,000.

4 94. Debtor believes that its ability to continue to offer and honor the Customer
5 Programs is essential to the satisfaction of its customers and the maintenance of customer
6 relationships.

7 95. To effectuate a smooth transition into Chapter 11, Debtor submits that it must
8 maintain customer loyalty and goodwill by maintaining and honoring the Customer Programs.
9 Debtor implemented the Customer Programs in the ordinary course of business prior to the Petition
10 Date as a means by which to maintain positive, productive, and profitable relationships with its
11 customers, encourage new purchases, enhance customer satisfaction, and ensure that Debtor
12 remain competitive in its industry.

13 96. The Customer Programs are designed and implemented to encourage Debtor's
14 customers to increase its purchasing frequency and volume, resulting in larger net revenues for
15 Debtor and, in return, greater satisfaction for the customers.

16 97. Accordingly, Debtor's ability to honor the Customer Programs in the ordinary
17 course of business is necessary to retain its customer base and reputation within its industry. On
18 account of the Customer Programs, Debtor may owe certain obligations to its customers, like
19 refunds, arising both before and after the Petition Date.

20 98. The success and viability of Debtor's business, and ultimately Debtor's ability to
21 maximize the value of the Debtor's estate, are dependent upon the patronage and loyalty of its
22 customers. In this regard, the Customer Programs are essential, and any delay in honoring
23 Customer Obligations will severely and irreparably impair customer relations, thereby harming
24 Debtor's efforts to maximize value for all interested parties.

25 99. Debtor seeks authority to continue, in its discretion, to offer and honor its
26 obligations in connection with the Customer Programs, including the payments related to requested
27 refunds ("Customer Obligations").

28

1 100. Debtor's ability to immediately honor Customer Obligations is necessary to retain
2 and maintain a substantial and integral part of Debtor's business operations and customer base.
3 Indeed, Debtor believes that, without the requested relief, its customers will lose confidence in
4 Debtor and may cease continued relationships. In addition, honoring the Customer Obligations is
5 consistent with maintaining the System as a going-concern as the Debtor pursues the Sale.
6 Allowing Debtor to honor its prepetition Customer Obligations is especially appropriate where
7 doing so is consistent with the "two recognized policies" of Chapter 11 of the Bankruptcy Code—
8 preserving going concern value and maximizing the value of property available to satisfy creditors.

9 101. For the foregoing reasons, honoring the prepetition Customer Obligations will
10 benefit Debtor's estate and its creditors by allowing Debtor's business operations to continue
11 without interruption.

12 102. Debtor has determined, in the exercise of its sound business judgment, that
13 honoring the Customer Obligations and continuing the Customer Programs are not only essential
14 to the eventual resumption of operations, but also necessary to ensure that the value of Debtor on
15 a going-concern basis is preserved through the pendency of the Sale.

16 103. Any loss of customers caused by failure to honor the Customer Obligations under
17 the Customer Programs will damage Debtor's core business to a far greater extent than the costs
18 associated with honoring such prepetition Customer Obligations and Customer Programs.

19 104. Debtor submits that it has sufficient availability of funds to pay the amounts
20 described herein in the ordinary course of business. Also, under Debtor's existing cash
21 management systems, Debtor represents that it can readily identify requests relating to an
22 authorized payment made pursuant to its Customer Obligations described in this Motion.
23 Accordingly, Debtor requests authorization to issue replacement checks, submit replacement fund
24 transfer requests, or provide other means to the extent necessary to pay all outstanding prepetition
25 Customer Obligations. Debtor's banks and financial institutions shall be entitled to rely on the
26 representations of Debtor as to which refunds are issued or authorized to be paid pursuant to the
27 order.

28

105. In view of the urgency of the relief requested in the Customer Programs Motion
2 and the risk to Debtor's limited operations if Debtor cannot pay its Customer Obligations, a
3 fourteen-day stay of the relief sought herein is impractical.

106. If the outstanding Customer Obligations are not immediately satisfied, Debtor will
experience immediate and irreparable harm.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

8 DATED this 7th day of September, 2020.

9
10 By: /s/ Curtis L. Myles, III
CURTIS L. MYLES, III